



December 22, 2009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Avenue, NW
Washington, DC 20551
Attn.: Docket Nos. R-1366 and 1367

Re: Regulation Z - Truth in Lending - Closed-end Mortgages [R-1366] and Home-Equity Lines of Credit (HELOC) [R-1367]

Dear Ms. Johnson:

This comment letter is submitted by HSBC Bank USA, National Association ("HSBC") in response to proposed rulemaking on the above-referenced Truth in Lending regulations. HSBC appreciates the opportunity to provide its comments on the proposed rule. HSBC is part of the HSBC Group, one of the largest financial services organizations in the world. HSBC North America Holdings Inc. ("HSBC North America") is one of the ten largest financial services companies in the United States. HSBC North America comprises all of HSBC's U.S. and Canadian businesses with assets totaling \$391 billion (US GAAP basis) as of September 30, 2009. The company's businesses serve North American customers in the following key areas: personal financial services, credit cards, specialty insurance products, commercial banking, private banking, and global banking and markets.

HSBC generally supports the intent of this proposal, to make disclosures more meaningful to borrowers. However, there are a few areas of the proposal which HSBC believes can be improved, and we are grateful for the opportunity to comment.

I. Closed End Loan Proposal [R-1366]

A. Inclusion of additional fees in APR calculation

The Board proposes to include additional fees in the finance charges used to calculate the APR for closed end loans. The intent is to make the APR a more meaningful reflection of the cost of credit. The Board requested comments in a number of areas related to the finance charge. While we have not responded to all of them, we have some specific comments we would like to emphasize.

While HSBC generally supports the concept of a simplified APR calculation, the proposal will have

unintended consequences because of the link between the Board's definition of finance charges and state high-cost laws. Often, states restrict high-cost loans based on a points and fees threshold that is much lower than the HOEPA points and fees threshold. These state laws were designed based on an assumption that reasonable and customary appraisal, credit report, title, and government recording charges would be excluded from the points and fees. The points and fees thresholds under these laws were set significantly lower than the HOEPA threshold. Therefore, we believe that many loans would exceed such state law thresholds under the new proposal. As HSBC originates only "prime" loans, mostly FNMA, FHLMC, and FHA loans at this time, and does not utilize brokers, our loans should never technically be high-cost, yet this proposal will make them so, at least under state laws. Because high-cost loans are widely regarded as predatory and unsaleable on the secondary market, most lenders are unwilling to make them, under federal or state law. The proposal would force lenders to restrict credit in those states that have a low points and fees threshold. We believe this would be contrary to the intent of the proposal, harmful to consumers, and counter to the Federal government's recent efforts to increase credit in the mortgage market.

Another issue with respect to the proposed "all-in" APR is that it exposes the lender to potential liability for a settlement agent's fees that are not known until the closing occurs. Lenders have no control over these fees, and recently HUD has made it clear that "pressuring" settlement service providers to change their fees could be a RESPA violation. Therefore, it is essential that lenders not be held to APRs that include such third-party, unknown fees.

HSBC further submits that amounts paid into escrow accounts should be excluded from the calculation of the APR, as they currently are. Insurance premiums and taxes are properly excluded from the finance charge by the proposal, as they are items payable in comparable cash transactions. The proposed inclusion of amounts paid into escrow accounts in the APR calculation would mislead consumers who may get one quote on an escrowed loan from one lender and a non-escrowed quote from another lender. In both cases, the borrower would ultimately have to pay the same amount of insurance and taxes but the escrowed loan disclosure will appear to be more expensive. In addition, the APR for identical loans could be vastly different, due to the fact that the escrow deposit is determined based on the date the loan closes and when the next tax payment is due.. An APR that includes escrow deposits will not accurately reflect the actual cost of the credit and therefore cannot enhance the consumer's ability to make an informed choice between loans.

B. Timing of Adjustment Notices

We support the proposal to increase from 25 days to 60 days the minimum prior notice of any payment change on variable rate loans. However, exceptions should be provided for existing loans with look-back periods shorter than 45 days. HSBC's portfolio contains a small percentage of loans with very short look-back periods (less than 30 days), and a reasonably high number of 30 day look-back period loans (such as FHA loans). Without an exception for these, lenders will be faced with the choice of either violating the regulation or breaching the contract with the borrower.

C. Prohibiting Loan Originator Compensation Based On Loan Terms and Conditions

HSBC strongly endorses eliminating the practice of paying overages to loan originators. This practice drives up the cost to the consumer, and it is difficult to identify in a loan transaction.

HSBC believes that the Board should permit loan originators to receive payments that are based on the principal loan amount, and should permit compensation to be based on total dollar amount of loans as well as total number of loans. Therefore, we support Alternative 2 to 226.19(a)(2)(iii) and accompanying comment 36(d)(1)-10. Payments based on the loan amount are common within the mortgage industry, but do not have the same potential for harm to consumers that can result from the practice of paying overages. On refinances, the amount needed to pay off the borrower's loan is already set before the loan originator becomes involved. In the case of cash-out refinances, it is the borrower who determines how much cash the borrower needs, and on purchase transactions it again is the borrower who determines how expensive a home to buy, the down payment to make, etc. Lenders must have an effective means of creating positive incentives for loan officers, without inadvertently causing detriment to consumers. We believe that Alternative 2 meets the needs of both lenders and consumers. HSBC has not paid its loan officers "overages," and HSBC supports the elimination of that element of loan officer compensation.

Regarding proposed 226.36(e)(2) and (3), which provide a safe harbor regarding "steering" if a loan is chosen by the consumer from at least three loan options for each type of transaction, HSBC proposes an additional safe harbor. HSBC believes that the consumer would be well-served, and steering would certainly be avoided if the consumer chooses a loan insured or guaranteed by a government sponsored enterprise (Fannie Mae, Freddie Mac or FHA), regardless of the number of loan options offered. In fact, HSBC believes that offering 3 options to all consumers could cause additional confusion.

Finally, HSBC submits that additional compensation should be permitted for Community Reinvestment Act (CRA) loans, defined as loans to low- and moderate-income (LMI) consumers and loans secured by property in LMI census tracts. This is an important incentive, because CRA loans can be much more difficult to originate than other loans.

II. Open End Loan Proposal-Home Equity Line Management/Reinstatement [R-1367]

A. Time Limit for Reinstatement

HSBC appreciates and supports the need for uniform rules regarding home equity line management practices. However, HSBC respectfully submits that the 30 day time limit for reinstatement decisions under section 5b(g)(2), which requires the creditor to mail or deliver an adverse action notice within that period, is too short. The 30 day period should be flexible, similar to that under Regulation B, allowing the creditor to take various actions within the 30 days. For example, if an appraisal is required, the creditor should be able to treat the reinstatement request as "incomplete" until the appraisal is delivered to the lender.

In addition, sometimes the creditor may properly require additional information from the consumer in order to fully investigate a request for reinstatement, such as to determine whether fraud or material misrepresentation is a factor, or to obtain current income or asset documentation (which the consumer may not provide promptly). A comment to section 5b(g)(2)(v) would be helpful to clarify that the creditor may decline to reinstate credit privileges within 30 days if such information is not made available to the creditor in a timely manner. Otherwise, the creditor may be unable to meet the 30-day time requirement.

Also, Section 5b(g)(3) states that the creditor must provide the consumer, upon request, “a copy of the documentation supporting the property value on which the creditor based the action.” HSBC would like to get a clarification that the consumer is only entitled to whatever the creditor actually gets (which might be a one line automated valuation method report (AVM) or broker price opinion (BPO)).

B. Cost for Reinstatement

Finally, HSBC does not believe it is appropriate to place the economic burden for the first reinstatement investigation on the creditor. This will create an incentive for consumers who do not actually have a valid reason for reinstatement to appeal anyway, and will result in high and unnecessary costs to creditors. HSBC understands that up to this point, there may have been sporadic inappropriate use of the termination/suspension rights granted under Regulation Z, but this proposal goes too far in shifting the economic burdens. It would be preferable to have more specific termination/suspension requirements in the Regulation itself that lenders could rely on and be examined against, rather than opening up “free” appeals to consumers. The cost of these appeals (which will include out-of-pocket costs for valuations, etc.) would, obviously, have to be spread to all new home equity line of credit borrowers.

III. Implementation Period [R-1366 and R-1367]

HSBC believes that the implementation period should be sufficient to permit those covered by the regulation to review the provisions of the rule, seek clarification on any ambiguous provisions, and adopt all of the changes into their compliance systems (including technology requirements, training, controls, etc.). Such a period should be no less than eighteen months after the effective date (which is the time period that was given for implementation of the January 2009 final rules). HSBC understands that the industry’s view of reasonable time for implementation may be looked at with some skepticism, but the real difficulties of the recent retooling for the RESPA overhaul (in little over one year) indicates to us that we are being realistic with this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Grace".

Patricia Grace
Deputy General Counsel